

Electric Records Retention and Destruction Advisory Committee
Meeting Minutes
Friday, June 14, 2013
10:00 a.m. – 3:00 p.m.
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

Present: David Bodney, Raushanah Daniels, Christopher Hale, Cheri Heppler (proxy for Judge Dorothy Little), Judge Eric Jeffery, Mark Jensen, Janet Johnson, William Mangold, Sandra Markham, Diane McGinnis, Jeff Raynor, Marcus Reinkensmeyer, Jon Smith, Melanie Sturgeon, Judge Samuel Thumma, Marty Vance.

Absent/Excused: Judge Janet Barton, Judge John Nelson.

Administrative Office the Courts (AOC) Staff: Stewart Bruner, Melinda Hardman, Kym Lopez.

Guests: Melanie Fay (Maricopa County Superior Court), Carrin Huff (AOC), Therese Martin (Arizona Attorney General's Office), Kay Radwanski (AOC), Linda Reib (ASLAPR), Lindsey Robertson (R3 Investigations), Richard Robertson (R3 Investigations), Amy Wood (AOC).

Call to Order/Welcome and Introductions

With a quorum present, the June 14, 2013, meeting of the Electronic Records Retention and Destruction Advisory Committee was called to order by Marcus Reinkensmeyer, chair. Mr. Reinkensmeyer welcomed members and introductions were made around the room.

Approval of Minutes

Mr. Reinkensmeyer presented the April 30, 2013, Electronic Records Retention and Destruction Advisory Committee meeting minutes for approval.

Motion: William Mangold moved to approve the April 30, 2013, Electronic Records Retention and Destruction Advisory Committee meeting minutes as presented. **Second:** Janet Johnson. **Vote:** Motion passed unanimously.

Update on Panepento vs. Lee/Riojas/State

Melinda Hardman reported that a Petition for Special Action Relief was filed in the Arizona Supreme Court in the Panepento case. However, on May 29, 2013, the court declined to accept jurisdiction of the Petition.

Statistical Requests Received by the AOC

Amy Wood provided a PowerPoint presentation on the types of statistical requests the AOC receives and the case data that is needed to respond to these requests. Ms. Wood also discussed basic statistical concepts and proposed factors to consider when assessing timeframes for data retention.

Additional presenter comments included:

- The AOC uses data to calculate judicial productivity credits for limited jurisdiction courts. Pursuant to statute, these credits are based on a two-year calendar cycle. However, in order to compare any two-year calendar cycle with the preceding cycle, the

AOC must retain four-years' worth of limited jurisdiction court case data. Finally, since Arizona courts operate on a fiscal year but judicial productivity credits are calculated on a calendar year, the AOC must actually retain five-years of case data.

- The longest period of time for which the AOC generally needs to study case data to analyze trends is 15 years; however, in this situation, old data may not be as reliable as the newer data.
- The AOC receives approximately 30-50 data research requests a year and another 50-100 requests that rely on already-compiled data.
- Requests for data come from the Arizona legislature, Arizona courts, Arizona probation departments, the National Center for State Courts, organizations that have received a grant from a national entity, the media, members of the public, universities and researchers, and other government agencies.
- Each year, the AOC collects data from Arizona courts and publishes this data. The AOC also receives requests for static numbers that the AOC does not regularly collect, so these requests are turned down.

Use of Electronic Court Records by Investigative Services

Rich Robertson, owner of R3 Investigations, is a private investigator. Mr. Robertson explained how he uses court records and the length of time for which he would like to have these records available. Mr. Robertson stated that he generally looks at individual case records for a particular client, while the AOC generally looks at aggregated data to analyze trends. Court records have considerable implications for people in areas such as employment, the purchase of firearms, immigration, and child custody. Mr. Robertson noted that some states have enacted statutes to limit how far back in time an employment background report can go. He asked that this committee consider a similar policy recommendation before it seeks to shorten any existing records retention time periods.

Mr. Robertson's comments included:

- When court records are destroyed, there is no opportunity for the person who is the subject of the record to challenge erroneous information in the record. Destroyed records cannot be challenged, refuted, corroborated, or resolved.
- Court records are not kept in isolation. Court records are often reported to other entities such as the FBI. The records will reside with these other entities long past the time the records are destroyed by the court.
- Investigators use court records for a variety of reasons, including to identify witnesses, assess credibility, construct a chronology of a person's life, check an alibi, verify assertions, locate people, link people and businesses, identify criminal activity, and determine civil employment.
- New advances in science have led to the reevaluation of old criminal cases, but if case records are destroyed, reevaluation is no longer available.
- Case records need to be available but not necessarily on the Internet.
- Once a juvenile becomes an adult, the juvenile's court records should be *sealed* rather than *destroyed*.
- There are legitimate policy questions on what should be available on the Internet. One thought is to limit the amount of time case records are available to the public but still have records available for research purposes.

- Private investigators often rely on private data aggregators and enter a search in the private database to determine whether a case ever even existed. However, the federal fair credit reporting act requires the investigator to then follow up and obtain the original case record from the court.
- If a case file is physically destroyed, but a line of data is still available about the case from the court, Mr. Robertson wants to at least have this line of data preserved to indicate that a case existed at one point.

Discussion of Electronic Records Retention and Destruction Policy Questions (Administrative Order)

The committee discussed the four issues in the authorizing AO on which it is being asked to examine and make recommendations. Comments and ideas expressed by members included:

Issue 1: When the minimum retention period has been met under the existing retention schedules, is destruction of electronic case documents and data mandatory or permissive?

- The current records retention schedules are permissive, and this fact has led to problems when some courts delete case records while others do not. The committee should settle this question. This issue had not been a critical factor for the Arizona Superior Court previously, since the Arizona Superior Court has not yet reached all of the timeframes in the schedule – most of which are 50+ years. Furthermore, there is no authority that instructs courts on what to do with case *data*.
- Courts are running out of physical space to store paper records.
- The retention of a case file and information in the case management system about the case should match. Either both should be retained or both should be destroyed.
- The elected clerks of court would like clarification on whether the current records retention schedules are intended to be mandatory or permissive.
- Perhaps case records could be retained for an extended period of time and only be made available via tiers of access.
- The committee needs to better understand whether the original records retention schedules were intended to be permissive or mandatory. These earlier reasons may no longer be valid.
- Retention schedules need to be applied consistently among courts and the schedules need to provide exceptions for retaining historically significant cases.
- Retention schedules need to be based, in part, on the long term historical value of a record. Municipal court case records generally do not have long term value. The State Archives holds many old justice and municipal court records from territorial days, but only because justice courts handled different types of cases then. Additionally, current records retention schedules must be mandatory, otherwise Arizonans will receive uneven treatment.
- Does the question the committee is being asked to address presuppose that *paper* records are to be preserved indefinitely? Rule 123, Rules of the Supreme Court, is premised on the notion that there will be paper records at the courthouse and that remote electronic access is supplementary.
- There should be a distinction between access to and retention of case records, but the format of the case record, whether it is paper or electronic, might not matter.

- Courts generally follow retention schedules for paper copies because of physical space constraints, but this is not always true with electronic copies, because of lack of personnel resources.

Issue 2: Given that it is easier to systematically destroy electronic records, are the current records retention time periods adequate?

- It might not be easier to systematically destroy electronic records.
- The committee needs to clarify the purpose for the existing records retention schedules before it can determine whether the current time periods are adequate.
- Additionally, the committee must ask, “Are the current retention periods adequate *to whom?*”
- The committee should consider how the use of technology is changing, including the fact that older criminal cases are being reviewed again using new technology. Perhaps some select criminal cases should have a longer retention period.
- Technology is being enhanced to the point where it is possible to develop a computer program that will delete an electronic case based on the case type and the case disposition code rather than on the age of the case. This could make records retention easier, but it may also result in loss of control of the record by the court.
- Current records retention schedule problems include the fact that civil traffic cases are required to be retained for only one year; however, statute establishes a look-back period of three years for violation of the motor vehicle financial responsibility requirement. Additionally, sex offenders are required to register for life; however, courts are not required to retain sex offender case records indefinitely. Perhaps both a permissive and a mandatory level of retention could be created.
- Some agencies currently have minimum and maximum retention periods in their records retention schedules.
- An analysis of the relative costs and benefits of retention vs. destruction of case records would be helpful.
- The committee should keep in mind the potential harm caused to a person when a court record haunts the person for years.
- Once a record gets out on the Internet, it cannot be controlled.
- Perhaps Dr. Sturgeon can provide additional information on what is involved with preserving case records over time.
- Most of the elected clerks of court believe the retention periods in the current superior court records retention schedule are long enough; however, some elected clerks believe some retention periods could be shorter.

Issue 3: Should policies regarding the length of time case documents and data are made available to the public online be consistent across court levels and from court to court within the same level?

- For courts that have case records online, the length of time the records are made available to the public should be consistent.
- The committee must think about the impact of records destruction on the public, not just about the cost of retention. Access to these records online should be consistent across the state.

- All courts should provide information to the Arizona Supreme Court's Public Access website. Arizona courts currently operate with ten different case management systems, and the systems that were built by individual courts do not always contribute information to the Public Access website. The site does identify the courts that contribute and the courts that do not. It is hoped that AJACS will provide a more universal system in this regard. This committee should identify this issue as a concern in its report to the AJC.

Issue 4: Once the destruction period is reached, should originals or copies of data or documents be retained for purposes of government research and analysis, and if so, should those records continue to be publicly available or released only pursuant to court order?

- If a record is retained, it is public.
- The best practice in records retention is that when the retention schedule time period has been reached, the record should be destroyed. If the record is not destroyed, it is open for discovery purposes, even if the original record is destroyed and only a digitized copy is kept. The digitized copy is still a public record.
- Adoption records in the possession of the State Archives are sealed until they are 100 years old. Then the State Archives opens the file. The file is not destroyed after 100 years.
- There are record systems that are not public, such as law enforcement criminal databases. The legislature can pass a statute to identify a particular reason to maintain a database and close the database to the public.
- Records that a government employee keeps in the course of his or her job are a public record, but many public records are closed. An example of a closed public record is adoption records.
- Redaction software tools cannot be relied upon as a solution to hide the identity of a person in court records. Human intervention is required for decisions on the information to be redacted from a document.
- Are courts able to quantify how often they do not have records someone has requested?

Next Meeting Date

July 30, 2013; 10:00 a.m. – 3:00 p.m.
Arizona State Courts Building, Conference Room 119 A/B

Good of the Order/Call to the Public

Therese Martin explained that there is a distinction between a *record* and a *public record*. Not all records that are generated by individuals in a government entity are public records. Ms. Martin also suggested that the committee might want to think about focusing on particular case types in its records retention efforts. For example, the committee might decide that criminal cases are of particular concern because if an error occurs in a criminal case, the error cannot be corrected when the case is destroyed. This situation may impact individual rights that are provided by the Arizona Constitution.

Adjourned at 1:30 p.m.